IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4721 OF 2006

Mrs Sunanda V. Swanne ...Petitioner

v/s

Smt Meenabai P. Ujalambe ...Respondent

Mr G.S. Godbole with Mr S.S. Kanetkar for Petitioner.

None for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 6TH JULY 2007.

P.C. :-

1. The facts that are revealed are startling. There is a suit filed by the landlord for a decree of eviction against the petitioner. One of the grounds on which the decree of eviction is sought is that the premises are bonafide needed by the landlord. The Plaintiff-landlord examined himself as a witness. The matter was before the court for cross-examination of the Plaintiff by the Defendant on 7-2-2006. On that date an application was made for adjournment on the ground that a near relative of the advocate appearing for the Defendant has died, therefore, the advocate has gone to Pune and therefore, the matter should be adjourned. The court made an order granting adjournment, but noting that the adjournment is granted as a last chance. The matter was adjourned to 17-3-2006. On 17-3-2006 again an application was made, this time saying that the near relative of the Defendant has died, therefore, the Defendant has gone out of station, and therefore, the matter should be adjourned. The court even granted this application, but noting that this is strictly a last chance. The matter was now fixed on 4-4-2006. On 4-4-2006 again an application for adjournment was made on behalf of the Defendant on the ground now that the mother-in-law of the Defendant has died and therefore,

the matter should be adjourned. The application was opposed this time by the Plaintiff. The Court still granted the application, but the adjournment was granted subject to payment of costs of Rs.150/-. Now the matter was adjourned to 25-4-2006. Again an application was made for adjournment on behalf of the Defendant. This time on the ground that the husband of the Defendant has met with an accident and therefore the matter should be adjourned. The application was again opposed by the Plaintiff. The court by order dated 25-4-2006 rejected the application observing that even the amount of costs that was imposed by order dated 4-4-2006 has not been paid or deposited. The court also made an order that the Defendant does not want to cross-examine the Plaintiff, therefore, the matter to proceed further. The case was now fixed on 5-6-2006. On 5-6-2006 an application was made that the order closing the evidence of the Plaintiff should be recalled and the Defendant should be given permission to cross-examine the Plaintiff. In this application, there is no explanation given why adjournments were sought on earlier occasions, why amount of costs was not deposited. This application was opposed by the Plaintiff. The court rejected the application holding that no sufficient ground has been shown for recalling the order. Against the order dated 5-6-2006 rejecting the application filed by the Petitioner for permission to cross-examine the Plaintiff

and against the order dated 25-4-2006 closing the evidence of the Plaintiff, the present petition was filed. In that petition on 26-7-2006 an interim order was secured, as a result of which further proceedings in the civil suit are stayed.

2. The order declining to grant adjournment and the order rejecting an application filed by the defendant to cross-examine the plaintiff are orders of interlocutory nature which are capable of being challenged with the final order that may be passed in the suit. The appeal Court is also a Court of fact, therefore if the Appeal Court comes to the conclusion that the defendant was entitled to cross-examine the plaintiff, the Appeal Court can permit the defendant to cross-examine the plaintiff. It can also remit the matter back only for that purpose to the Trial Court and call for the report of the Trial Court and then decide the appeal. As all these remedies are available under the law itself, a writ petition can not be entertained against the interlocutory orders. So far as the present case is concerned, the conduct of the petitioner shows that the petitioner has throughout indulged in abusing the process of the Court. On 7-2-2006, adjournment was taken on the ground that the advocate’s near relative had died. On 17-3-2006, adjournment was taken on the ground that the near relative of the Defendant has died.

The name of the near relative, his relationship with the Defendant was not disclosed. The fact that the relative has died is not supported by any document. Same is the case when the matter was before the court on 4-4-2006. This time adjournment was sought on the ground that the mother-in-law of the Defendant has died, but no document in support of that is produced. Then on 25-4-2006, adjournment was sought on the ground that the husband of the Defendant has met with an accident, but again there is nothing on record to support that. The Petitioner has nowhere explained if the matter was for cross-examination of the Plaintiff, why presence of the Defendant in the court was necessary. It is clear that from time to time adjournments were sought just to delay the trial of the suit and even this petition was filed for that purpose only. Despite the court granting an opportunity, the Plaintiff was not cross-examined. Even till today there is no explanation why the amount of costs which was awarded by the order dated 4-4-2006 was not deposited before the next date. Then this petition was filed, interim order was secured as a result of which the suit has remained stayed right from July, 2006. In my opinion, therefore, taking overall view of the matter, not only the petition is liable to be dismissed but exemplary cost has to imposed on the petitioner for abusing the process of Court. Petition is rejected. The petitioner is directed to pay as and

by way of cost to the respondent an amount of Rs.10,000/-. The amount of Rs.10,000/- has already been deposited by the petitioner in this Court pursuant to the order dated 23rd March 2006. The Office is directed to send that amount to the Trial Court. The Trial Court on receipt of that amount shall permit the withdrawal of that amount to the respondent/plaintiff.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary as true copy.

. Certified copy expedited.